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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/466,982	12/17/1999	WHYNN VICTOR LOVETTE	104421	1810

7590 01/11/2006

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EXAMINER

MISLEH, JUSTIN P

ART UNIT	PAPER NUMBER
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2612

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/466,982	Applicant(s) LOVETTE ET AL.	
	Examiner Justin P. Misleh	Art Unit 2612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on October 17, 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 - 9, 11 - 13, and 15 - 23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 - 9, 11 - 13, and 15 - 23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments and amendments, filed October 17, 2005, with respect to the rejection of Claims 1 – 9, 11 – 13, and 15 – 23 under 35 U.S.C. 112, first paragraph, have been fully considered and are persuasive. Thus, the rejection has been withdrawn.
2. More specifically, Applicant's arguments beginning on page 8 (last full paragraph) and concluding at the end of page 9 demonstrate how exemplary Claim 1, as amended, contains subject matter which is described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it most nearly connected, to make and/or use the invention. Furthermore, Applicant's have demonstrated how one with ordinary skill in the art would apply the disclosure of figure 3 with regard to disclosure of figure 1. Finally, Applicant has demonstrated how the uncalibrated video input (1000) to the system (100) in figure 1 becomes two video channel inputs (with a tab and without a tab) to the process (400) in figure 3 and how the two video channel outputs (with a tab and without a tab) of the process (400) in figure 3 becomes the video input (1300) to the process (500) in figure 4.
3. However, upon further consideration, the Examiner maintains (see page 3; Non-Final Office Action; August 24, 2005) that the detailed description of figure 3 has failed to show how the "automatic gain control tab setpoint" is established or how a "tab" yields a video channel input with an "automatic gain control tab" and a video channel input without an "automatic gain control tab". Moreover, the Examiner maintains that the claim terms "white tab", a "tab covers" and "automatic gain control tab" are terms that are NOT known or enabling to one with ordinary

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skill in the art. Thus, based upon above comments, a new ground of rejection is made in view of 35 U.S.C. 112, 2nd paragraph.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. **Claims 1 – 9, 11 – 13, and 15 – 23** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. As stated in MPEP §2173.05(a), “the meaning of every term used in a claim should be apparent from the prior art or from the specification and drawings at the time the application is filed.” In fact, “Applicants need not confine themselves to the terminology used in the prior art, **but are required to make clear and precise the terms that are used to define the invention** whereby the metes and bounds of the claimed invention can be ascertained.” (emphasis added).

7. In this case, the phrases “**automatic gain control tab**”, “**automatic gain control tab provided for a video channel**”, and “**not provided with the automatic gain control tab**” is NOT terminology known to or commonly used in the prior art or by one with ordinary skill in the art. Applicant, however, has failed to make such terms clear and precise such that the invention may be properly defined. Thus, the metes and bounds of the claimed invention cannot be ascertained.

8. Applicant is reminded in MPEP §2111.01 [III], that Applicant may be his or her own lexicographer. As stated, the “inventor may define specific terms used to describe invention, but

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must do so 'with reasonable clarity, deliberateness, and precision' and, if done, must 'set out his uncommon definition in some manner within the patent disclosure so as to give one of ordinary skill in the art notice of the change' in meaning".

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Justin P Misleh whose telephone number is 571.272.7313. The Examiner can normally be reached on Monday through Friday from 8:00 AM to 5:00 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Ngoc Yen Vu can be reached on 571.272.7320. The fax phone number for the organization where this application or proceeding is assigned is 571.273.3000.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JPM

January 7, 2006



NGOC-YEN VU
PRIMARY EXAMINER